

CHRISTY CAMBERS
Claimant

APICO CORPORATION
Respondent

KEMPER INSURANCE COMPANIES
Insurance Carrier

ORDER

APPEARANCES

RECORD & STIPULATIONS

ISSUES

Claimant contends her fibromyalgia condition either was caused or was aggravated, accelerated, or intensified by her job duties through August 18, 1998, and she is entitled to a work disability.

Conversely, the respondent contends the preponderance of the medical evidence supports the Administrative Law Judge's determination that the claimant's underlying systemic disease process of lupus gave rise to the fibromyalgia condition.

The issues before the Board on this review are: (1) whether claimant sustained accidental injury arising out of and in the course of her employment; and, if so, (2) what is the nature and extent of claimant's disability, if any?

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the entire record filed herein, the stipulations of the parties and having considered the briefs and arguments of counsel, the Board finds the Award entered by the Administrative Law Judge should be affirmed. The Board agrees with and adopts the findings of fact and conclusions of law set forth by the Administrative Law in the Award.

It is uncontroverted that claimant suffers from lupus and fibromyalgia. The dispositive issue is whether her repetitive activities at work either caused or permanently aggravated her fibromyalgia condition.

Three medical opinions were proffered regarding the issue of causation for the fibromyalgia. Kenneth Dean Reeves, M.D., board certified in physical medicine and rehabilitation, examined the claimant at the request of her attorney. Ira Fishman, D.O., a physical medicine, rehabilitation specialist and board certified physiatrist, conducted a court ordered independent medical examination. Philip R. Mills, M.D., who testified he has a significant amount of experience treating fibromyalgia and was designated the authorized treating physician by an Agreed Order dated February 23, 1999, also performed an examination of the claimant.

Dr. Reeves, examined claimant on November 16, 1998, and issued a report which addressed causation for the fibromyalgia and concluded: "Without a defined date of injury I cannot state clearly that this is a work comp condition." Claimant's counsel then had a discussion with the doctor and provided a description of claimant's job duties with respondent. The doctor then provided a letter to claimant's counsel which noted that because of the repetitive nature of claimant's job duties it was more than 50 percent likely that the fibromyalgia began because of her work and that her job caused a permanent aggravation of the underlying fibromyalgia condition.

Dr. Fishman examined the claimant on August 31, 1999, and issued a report which addressed causation for the fibromyalgia and concluded:

Ms. Cambers' physical examination today, however, as well as review of her symptomatology, indicates a more widespread soft tissue disorder characteristic of fibromyalgia. In this regard, it is my impression, based within all reasonable degree of medical certainty from her examination today

and from review of her medical records and historical information, that such widespread soft tissue involvement, along with involvement of multiple joints, cannot be related to specific work activities. Instead, such widespread findings are more indicative of a reflection of an underlying systemic disorder such as lupus erythematosus.

Dr. Fishman testified claimant's fibromyalgia was related to her lupus and not to her work activities. The doctor noted claimant's repetitive work activities could cause aggravation to the underlying fibromyalgia condition but he could not state it would be a permanent aggravation.

Dr. Mills testified the fibromyalgia can be primary or secondary and claimant's fibromyalgia is secondary to her lupus and the fibromyalgia was caused by claimant's lupus and not by her work. The doctor further testified he is not convinced that anything permanently aggravates fibromyalgia in that the pain waxes and wanes.

As the Administrative Law Judge concluded, the testimony of Dr. Reeves is suspect in that he originally could not say whether the fibromyalgia was caused by work and then changed his opinion. The reason for the changed opinion was because he was later provided a job description which indicated claimant performed repetitive physical activities. However, the written job analysis provided the doctor was essentially the same as the job description the claimant gave the doctor at her examination. Moreover, Dr. Reeves also concluded the fibromyalgia was caused by work because the chronic pain complaints predated the lupus symptoms. However, this is not the history testified to by the claimant. She noted that both conditions developed at the same time and she could not state whether they initially began at home or at work. When she sought treatment with her personal physician she had both complaints of skin problems associated with lupus as well as chronic pain complaints associated with fibromyalgia.

As noted by the Administrative Law Judge, the testimony of Drs. Mills and Fishman that claimant's fibromyalgia was caused by her systemic lupus condition and was neither caused nor permanently aggravated by her work is more persuasive. Accordingly, the Board affirms the Administrative Law Judge's determination that the claimant failed to meet her burden of proof that she sustained accidental injury arising out of and in the course of her employment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Steven J. Howard dated February 19, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Richard J. Liby, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Workers Compensation Director